



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

AMADO TOTAAN ESPINO, JR.,
RAFAEL FONTELERA BARAAN,
CESAR ESTAYAN DETERA, EDWIN
TAN ALCAZAR, LOLITA DETERA
BOLAYOG, DENISE ANN P. SIA KHO
PO, ANNLYN PUJOL DETERA,
CYNTHIA DETERA-CAMARA, GLENN
ROSALES SUBIA and EMILIANO
FERRER BUENAVISTA,

Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

AMADO TOTAAN ESPINO, JR.,
RAFAEL FONTELERA BARAAN, ALVIN
LAGRIMAS BIGAY, MICHAEL
PACHECO RAMIREZ, GINA PRADO
ALCAZAR, AVERY LUSTESTICA
PUJOL, CYNTHIA DETERA-CAMARA
and LOLITA DETERA BOLAYOG,

Accused.

Crim. Case No. SB-16-CRM-0118

For: Violation of Sec. 3(e) of
R.A. 3019

Crim. Case No. SB-16-CRM-0119

For: Violation of Sec. 3(e) of
R.A. 3019

Present:

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

December 3, 2020 *[Signature]*

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[Handwritten signatures]

DECISION

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JOINT DECISION

VIVERO, J.

For decision are the consolidated charges for violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019)¹ or the *Anti-Graft and Corrupt Practices Act*, as amended, under two separate Informations against accused public officers Amado Totaan Espino, Jr. (Espino)², Provincial Governor, Rafael Fontelera Baraan (Baraan)³, Provincial Administrator, and Alvin Lagrimas Bigay (Bigay)⁴, Provincial Housing and Homesite Regulation Officer, all of the Provincial Government of Pangasinan and private individuals Cesar Estayan Detera (C. Detera)⁵, Edwin Tan Alcazar (E. Alcazar)⁶, Lolita Detera Bolayog (Bolayog)⁷, Denise Ann P. Sia Kho Po (Sia Kho Po)⁸, Annlyn Pujol Detera (A. Detera)⁹, Cynthia Detera-Camara (Camara)¹⁰, Glenn Rosales Subia (Subia)¹¹, and Emiliano Ferrer Buenavista (Buenavista)¹², Michael Pacheco Ramirez (Ramirez)¹³, Gina Prado Alcazar (G. Alcazar)¹⁴, and Avery Lustestica Pujol (Pujol)¹⁵, in connection with the soil remediation and/or magnetite and mineral

¹ Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful: x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

² Accused in both SB-16-CRM-0118 and SB-16-CRM-0119.

³ Accused in both SB-16-CRM-0118 and SB-16-CRM-0119.

⁴ Accused in SB-16-CRM-0119 only.

⁵ Member, Board of Directors of Alexandra Mining and Oil Ventures Inc. (AMOVI); Accused in SB-16-CRM-0118 only.

⁶ Member, Board of Directors of AMOVI; Accused in SB-16-CRM-0118 only.

⁷ Member, Board of Directors of both AMOVI and Xypher Builders Inc. (Xypher Builders); Accused in both SB-16-CRM-0118 and SB-16-CRM-0119.

⁸ Member, Board of Directors of AMOVI; Accused in SB-16-CRM-0118 only; The charges against accused Denise Ann P. Sia Kho Po were dismissed pursuant to the Decision dated 28 January 2019, *Rollo*, Vol. VI, pp. 190 to 209.

⁹ Member, Board of Directors of AMOVI; Accused in SB-16-CRM-0118 only; The charges against accused Annlyn Pujol Detera were dismissed pursuant to the Decision dated 28 January 2019, *Rollo*, Vol. VI, pp. 190 to 209.

¹⁰ Member, Board of Directors of both AMOVI and Xypher Builders; Accused in both SB-16-CRM-0118 and SB-16-CRM-0119; The charges against accused Cynthia Detera-Camara were dismissed pursuant to the Decision dated 28 January 2019, *Rollo*, Vol. VI, pp. 190 to 209.

¹¹ Member, Board of Directors of AMOVI; Accused in SB-16-CRM-0118 only; The charges against accused Glenn Rosales Subia were dismissed pursuant to the Decision dated 28 January 2019, *Rollo*, Vol. VI, pp. 190 to 209.

¹² Member, Board of Directors of AMOVI; Accused in SB-16-CRM-0118 only.

¹³ Member, Board of Directors of Xypher Builders; Accused in SB-16-CRM-0119 only.

¹⁴ Member, Board of Directors of Xypher Builders; Accused in SB-16-CRM-0119 only; The charges against accused Gina Prado Alcazar were dismissed pursuant to the Decision dated 28 January 2019, *Rollo*, Vol. VI, pp. 190 to 209.

¹⁵ Member, Board of Directors of Xypher Builders; Accused in SB-16-CRM-0119 only.

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extraction activities in Barangay Sabangan, Lingayen, Pangasinan in 2011.

The accusatorial portions of the two separate Informations filed with this Court on 14 March 2016 read:

Information in SB-16-CRM-0118¹⁶

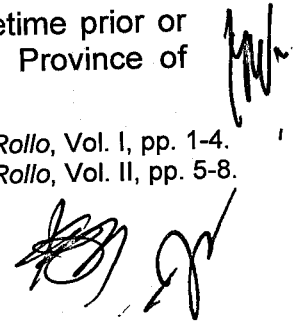
"That on or about the 29 June 2011, or sometime prior or subsequent thereto, in the Municipality of Lingayen, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused AMADO T. ESPINO, JR., being then the Provincial Governor, RAFAEL F. BARAAN, being then the Provincial Administrator, both high-ranking public officers, committing the crime herein charged in relation to their office and taking advantage of their official and/or administrative functions, with abuse of confidence, acting with evident bad faith, manifest partiality or gross inexcusable negligence and conspiring and confederating with each other and with CESAR E. DETERA, EDWIN T. ALCAZAR, LOLITA D. BOLAYOG, DENISE ANN P. SIA KHO PO, ANNLYN P. DETERA, CYNTHIA D. CAMARA, GLENN R. SUBIA and EMILIANO F. BUENAVISTA, being then Members of the Board of Directors of Alexandra Mining and Oil Ventures Inc., with all the accused mutually helping one another, did then and there willfully, unlawfully and criminally give unwarranted benefit, privilege or advantage to Alexandra Mining and Oil Ventures Inc. and cause undue injury to the government, by authorizing or allowing the said company to conduct soil remediation and/or magnetite and mineral extraction activities within Barangay Sabangan in Lingayen Gulf, Pangasinan, with accused Baraan upon authority of accused Espino issuing Small Scale Mining Permit Nc. 011-2011 in favor of said mining company, thereby causing or permitting the latter to conduct mining activities within said area, despite the fact that Alexandra Mining and Oil Ventures Inc. was not lawfully entitled to conduct mining activities within said protected area considering that: (1) Alexandra Mining and Oil Ventures Inc. was not duly-accredited by or registered with the Philippine Contractors Accreditation Board (PCAB); (2) the mining activities lacked the requisite area clearance from the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR); and (3) Alexandra Mining and Oil Ventures Inc. did not possess any business permit from the Municipality of Lingayen.

CONTRARY TO LAW."

Information in SB-16-CRM-0119¹⁷

"That on or about the 8 August 2011, or sometime prior or subsequent thereto, in the Municipality of Lingayen, Province of

¹⁶ Please see *Information* dated 09 February 2016 (SB-16-CRM-0118), *Rollo*, Vol. I, pp. 1-4.
¹⁷ Please see *Information* dated 09 February 2016 (SB-16-CRM-0119), *Rollo*, Vol. II, pp. 5-8.



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Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused AMADO T. ESPINO, JR., being then the Provincial Governor, RAFAEL F. BARAAN, being then the Provincial Administrator, both high-ranking public officers, and ALVIN L. BIGAY, being then the Provincial Housing and Homesite Regulation Officer, committing the crime herein charged in relation to their office and taking advantage of their official and/or administrative functions, with abuse of confidence, acting with evident bad faith, manifest partiality or gross inexcusable negligence, conspiring and confederating with each other and with MICHAEL P. RAMIREZ, GINA P. ALCAZAR, AVERY L. PUJOL, CYNTHIA D. CAMARA, and LOLITA D. BOLAYOG, being then Members of the Board of Directors of Xypher Builders Inc., with all the accused mutually helping one another, did then and there willfully, unlawfully and criminally give unwarranted benefit, privilege or advantage to Xypher Builders Inc. and cause undue injury to the government in the amount of PHP 10,750,000.00 by authorizing or allowing the said company to conduct soil remediation and/or magnetite and mineral extraction activities within Barangay Sabangan in Lingayen Gulf, Pangasinan, with accused Baraan upon authority of accused Espino issuing Gratuitous Permit No. 02-02-2011 and accused Espino issuing Mineral Ore Permit No. 003-2011 in favor of said mining company, thereby causing or permitting the latter to conduct mining activities within said area, despite the fact that Xypher Builders Inc. was not lawfully entitled to conduct mining activities within said area considering that: (1) Xypher Builders Inc. was not duly-accredited by, or registered with, the Philippine Contractors Accreditation Board (PCAB); and (2) the mining activities lacked the requisite area clearance from the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR), thereby allowing Xypher Builders Inc. to unlawfully sell to DH-Kingstone Holdings Co. Ltd. and/or export materials to China worth P10,750,000.00 which is the amount of undue injury suffered by the government.

CONTRARY TO LAW.”

Proceedings before the Sandiganbayan

On 18 March 2016, accused Espino, Baraan and Bigay filed an *Omnibus Motion*¹⁸ dated 15 March 2016 seeking the outright dismissal of the charges against them for lack of probable cause. In its *Resolution*¹⁹ dated 13 June 2016, the Court denied the said *Omnibus Motion* as it found that sufficient grounds exist for the finding of probable cause against all the accused and for the issuance of warrants for their arrest.

¹⁸ *Rollo*, Vol. II, pp. 10 to 60.

¹⁹ *Rollo*, Vol. III, pp. 96 to 101.

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The Court thereafter issued *Hold Departure Orders (HDO)*²⁰ and *Warrants of Arrest*²¹ against the accused. With the exception of accused Buenavista and Pujol who still remain at large, all the accused voluntarily surrendered and each posted cash bond for their provisional liberty.²² Upon their arraignment, all the accused pleaded not guilty to the charges.²³

In the *Pre-Trial Order*²⁴ dated 08 June 2017, the parties made the following admissions and proposed facts for stipulation:

A. As proposed by the prosecution:²⁵

1. At the time material to the allegations in the Informations, accused Espino, being then the Provincial Governor, accused Baraan, being then the Provincial Administrator, and accused Bigay, being then the Provincial Housing and Homesite Regulation Officer, all of the Province of Pangasinan, were public officers;²⁶
2. Accused Baraan upon authority of accused Espino issued on 29 June 2011 the Small Scale Mining Permit No. 011-2011 (SSMP) to Alexandra Mining and Oil Ventures Inc. (AMОВI) allowing the latter to extract and remove magnetite sand from the permit area;²⁷
3. Accused Baraan upon authority of accused Espino issued on 98 (*sic*) December 2011 a Mineral Ore Export Permit No. 02-02-2011 (*sic*) to Xypher Builders Inc. (Xypher Builders);²⁸
4. A Memorandum of Agreement (MOA) was entered into between the Provincial Government of Pangasinan, represented by accused Espino, and Xypher Builders, represented by accused Bolayog, for the removal of magnetite sand and other metals along the coastal area of

²⁰ *Rollo*, Vol. II, pp. 507 to 508.

²¹ *Rollo*, Vol. III, pp. 102 to 103.

²² *Rollo*, Vol. III, pp. 106, 109, 112, 117, 120, 122, 124, 126, 132, 136, 142, and 145; *Rollo*, Vol. IV, p. 443.

²³ *Rollo*, Vol. III, pp. 199-200; *Rollo*, Vol. IV, pp. 455-A to 455-B.

²⁴ *Rollo*, Vol. IV, pp. 229-250.

²⁵ SB-16-CRM-0118 & SB-16-CRM-0119.

²⁶ Admitted by accused Espino, Baraan and Bigay.

²⁷ Admitted by accused Subia, C. Detera, E. Alcazar, Bolayog, Sia Kho Po, A. Detera and Camara (in SB-16-CRM-0118). Admitted by accused G. Alcazar, Bolayog and Camara (in SB-16-CRM-0119).

²⁸ Admitted (except the word "Inc.") by accused Subia, C. Detera, E. Alcazar, Bolayog, Sia Kho Po, A. Detera and Camara (in SB-16-CRM-0118). Admitted (except the word "Inc.") by accused G. Alcazar, Bolayog and Camara (in SB-16-CRM-0119).

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Sabangan, Malimpuec and Capandan in Lingayen, Pangasinan;²⁹ and

5. Government Gratuitous Permit No. 02-2011 (GGP) was issued by accused Baraan to the Pangasinan Housing and Urban Development Coordinating Office (PHUDCO) and Xypher Builders.³⁰

B. As proposed by accused Espino, Baraan and Bigay:³¹

1. In 1994, former President Fidel V. Ramos issued Proclamation No. 156;
2. On 15 September 1997, the Provincial Government of Pangasinan put into motion efforts to develop the area subject of this case as an eco-tourism zone, through Governor Oscar M. Orbos, who issued Executive Order No. 97-0070 creating the Estanza Eco-Tourism Task Force;
3. President Ramos issued Presidential Proclamation No. 1258 on 22 June 1998, amending Proclamation No. 156 (s.1994) classifying the Lingayen Gulf as an environmentally critical area, and segregating some parcels of land of the public domain therefrom and reserving the same for eco-tourism and other sustainable development projects and activities of the Province of Pangasinan;
4. Presidential Proclamation No. 1258 on 22 June 1998 segregated parcels of public land situated in Barangays Sabangan, Estanza, Malimpuec and Capandan, Municipality of Lingayen, Province of Pangasinan and reserved the same for eco-tourism and other sustainable development activities and/or project of the Provincial Government of Pangasinan; and
5. Under the Annual Investment Program (AIP) of the Province of Pangasinan for 2010-2015, the development of the Lingayen golf course within the area covered by Presidential Proclamation No. 1258 is a major component of the

²⁹ Admitted (except the word "Inc." in Xypher Builders) by accused Subia, C. Detera, E. Alcazar, Bolayog, Sia Kho Po, A. Detera and Camara (in SB-16-CRM-0118). Admitted (except the word "Inc.") by accused G. Alcazar, Bolayog and Camara (in SB-16-CRM-0119).

³⁰ Admitted by accused Subia, C. Detera, E. Alcazar, Bolayog, Sia Kho Po, A. Detera and Camara (in SB-16-CRM-0118). Admitted by accused G. Alcazar, Bolayog and Camara (in SB-16-CRM-0119).

³¹ SB-16-CRM-0118 & SB-16-CRM-0119.



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Provincial Government's Eco-Tourism Zone Development Plan.

C. As proposed by accused C. Detera, E. Alcazar, Bolayog, Sia Kho Po, A. Detera and Camara:³²

1. Accused Baraan issued SSMP No. 011-2011 on 29 June 2011 in favor of AMOVI;
2. The SSMP was cancelled by accused Baraan on 15 July 2011;
3. With the cancellation of the SSMP, AMOVI aborted activity pursuant to the SSMP;
4. The SSMP was issued supposedly as an authority for AMOVI to extract/remove unsuitable metallic minerals, incidental but necessary to the soil remediation work of the planned golf course situated in Barangay Sabangan, Lingayen Pangasinan; and
5. The intended soil remediation was free of charge to the Provincial Government of Pangasinan.

D. As proposed by accused Subia:³³

1. Accused Subia has no participation in the activities of AMOVI;
2. AMOVI did not obtain nor receive material benefit from the government of the Province of Pangasinan; and
3. AMOVI was not able to start implementation of its SSMP due to its cancellation.

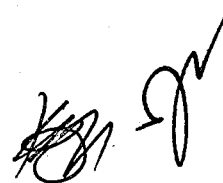
E. As proposed by accused G. Alcazar, Bolayog and Camara:³⁴

1. The GGP has been endorsed to the Provincial Governor of Pangasinan for his consideration and approval by the Provincial Mining Regulatory Board (PMRB) per Resolution No. 061 Series of 2011 dated 20 October 2011;

³² SB-16-CRM-0118.

³³ SB-16-CRM-0118.

³⁴ SB-16-CRM-0119.



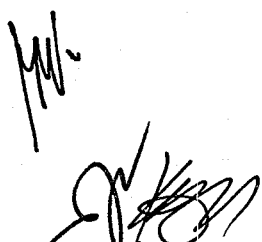
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2. The PMRB Resolution was signed, among others, by Carlos A. Tayag (Tayag), OIC Regional Director of Mines and Geosciences Bureau (MGB), and ex-officio Chairman of PMRB Pangasinan;
3. On 22 November 2011, accused Baraan wrote Director Tayag to request an inventory of the magnetite sand stockpile recovered in the development activities in the Lingayen Golf and Country Club project;
4. On 28 November 2011, Roel A. Collado (Collado), OIC, Mines and Management Division, submitted to the OIC Regional Director of MGB a written Inventory of Magnetite Sand Stockpile recovered from the extracted loose and unconsolidated materials;
5. On 05 December 2011, accused Baraan applied for Mineral Ore Export Permit (MOEP) from the MGB Regional Director for the 9,588 cubic meters magnetite sand;
6. On 06 December 2011, Tayag wrote accused Baraan advising that the issuance of MOEP had been delegated to the provincial governor;
7. On 08 December 2011, Ore Transport Permit No. 003-2011 (OTP) was issued by accused Espino to PHUDCO and Xypher Builders;
8. Extraction fee of Php1,075,000.00 was paid by PHUDCO/Cypher (*sic*) Builders to the Environment and Natural Resources Office (ENRO) per Order of Payment and Official Receipt No. 6323455A dated 07 December 2011;
9. On 03 December 2011, Cypher (*sic*) Builders applied MOEP per Order of Payment for Php2,750.00 and OR No. 6322994;
10. MOEP No. 033-2011 dated 08 December 2011 was issued by accused Espino to Xypher Builders; and
11. There was no document that accused G. Alcazar and Camara, signed in relation to any transactions or activities of Cypher (*sic*) Builders with the government of the Province of Pangasinan.

The block contains two handwritten signatures in black ink. The first signature is a stylized, vertical mark that appears to be the initials 'ML'. The second signature is a more complex, cursive signature that is difficult to decipher but appears to be a full name or a set of initials.

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The parties proposed several issues for resolution by this Court, which, however, may be deemed subsumed under the sole issue of whether or not the accused are guilty beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019.³⁵

Thereafter, trial on the merits ensued.

Evidence for the Prosecution

The prosecution presented (1) Ruben de Guzman Soriano,³⁶ (2) Carolina C. Saunar,³⁷ (3) Carlos A. Tayag,³⁸ (4) Amalia Garacho Menzi,³⁹ (5) Edgardo L. Sison,⁴⁰ and (6) Rolando N. Rea,⁴¹ as its witnesses.

(1) Ruben de Guzman Soriano

During his direct examination, Mr. Soriano attested that:

a) He is presently employed with the Mines and Geosciences Bureau (MGB), Regional Office 1;⁴²

b) In 2011, he was an Engineer III with the Monitoring and Technical Services Station of MGB Region 1, and as such he monitors approved mining contracts and permits and conducts investigations on mining complaints, among others;⁴³

c) Sometime in 2011, he was tasked to conduct an investigation relative to a complaint on alleged extraction of beach sand in Barangay Sabangan in Lingayen, Pangasinan;⁴⁴

d) Upon verification, he discovered that an SSMP was issued by accused Baraan to AMOVI for the extraction;⁴⁵

e) Upon their site visit on 06 October 2011, he did not find any actual or on-going beach sand extraction, but what he saw is an area

³⁵ *Rollo*, Vol. IV, pp. 233-235.

³⁶ Transcript Stenographic Notes (TSN) dated 15 June 2017 and 30 August 2017.

³⁷ TSN dated 06 September 2017. See Order dated 06 September 2017, *Rollo*, Vol. II, p. 398-A.

³⁸ TSNs dated 20 September 2017 and 25 October 2017.

³⁹ TSN dated 29 November 2017.

⁴⁰ TSN dated 17 January 2018.

⁴¹ TSNs dated 31 January 2018 and 14 March 2018. See Order dated 14 March 2018, *Rollo*, Vol. V, pp. 17-18.

⁴² TSN dated 15 June 2017, p. 7.

⁴³ *Id.*, pp. 10-11.

⁴⁴ *Id.*, pp. 11-12.

⁴⁵ *Id.*, pp. 18-20.

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that was recently rehabilitated or an area flattened with soil instead of sand. He also saw several heavy equipment adjacent to the area;⁴⁶

f) During his meeting with accused Espino, the latter informed the investigating group that the activity in the golf course is actually removing the beach sand to be replaced by soil so that grasses will grow;⁴⁷

g) As contained in his Investigation Report or the Memorandum dated 18 October 2011, he stated that the SSMP of AMOVI was issued without the required Environmental Compliance Certificate (ECC), without the endorsement of the Provincial Mining Regulatory Board of Pangasinan, and is lacking vital documents such as area clearance, posting requirements, and LGU prior approved endorsement;⁴⁸

h) In the same Investigation Report, he recommended that the SSMP issued to AMOVI be cancelled, that AMOVI be penalized for putting up a mineral processing plant without an ECC, and that a cease and desist order be issued to AMOVI enjoining the latter from further extracting beach sand pending the resolution of the issue;⁴⁹

i) As part of his job, he also provides technical assistance to the PMRB, including evaluation of pending mining applications filed with the local government unit;⁵⁰

j) During his stint as an evaluator, an application for gratuitous permit for Xypner Builders signed by accused Bigay and Alcazar was presented to him for evaluation. A gratuitous permit is needed for the extraction of loose or unconsolidated materials by a government agency or entity;⁵¹

k) During the meeting of the PMRB, taking into consideration that the proposed golf course is a project of the provincial government, the Board endorsed the application for GGP of Xypner Builders to accused Governor Espino for consideration;⁵²

⁴⁶ *Id.* p. 24.

⁴⁷ *Id.*, p. 37.

⁴⁸ *Id.*, p. 39.

⁴⁹ *Id.*, p. 41.

⁵⁰ *Id.*, pp. 44-45.

⁵¹ *Id.*, pp. 45-46.

⁵² *Id.*, p. 47.

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l) After the endorsement, it was already the Environment and Natural Resources Officer (ENRO) office who processed the document;⁵³ and

m) Sometime in December 2011, he came to know of the application for MOEP of Xypher Builders, and one of the attachments is the GGP.⁵⁴

Mr. Soriano also identified the following documents:

- a) Letter-complaint dated 19 September 2011 (Exhibit "K");⁵⁵
- b) Small-Scale Mining Permit No. 011-2011 issued on 29 June 2011 (Exhibit "A");⁵⁶
- c) Photos of pinpointed area and heavy equipment (Exhibits "P-11" to "P-14");⁵⁷
- d) Investigation Report or Memorandum dated 18 October 2011 (Exhibit "P-1" to "P-14");⁵⁸
- e) Application for Exclusive Sand and Gravel Permit/Private Gratuitous Permit (Exhibit "C");⁵⁹
- f) Government Gratuitous Permit No. 02-2011 approved on 24 October 2011 (Exhibit "D");⁶⁰ and
- g) Application for Mineral Ore Export Permit (Exhibit "E").⁶¹

On cross examination, the following statements were elicited from Mr. Soriano:

- a) He is aware of the golf course project in the area subject of their inspection/investigation;⁶²
- b) He found out after the investigation that the SSMP issued to AMOVI was recalled or revoked by accused Baraan;⁶³
- c) To be able to remove sand as part of the golf course construction, the gratuitous permit will allow them to remove the top sand;⁶⁴

⁵³ *Id.*, p. 47.

⁵⁴ *Id.*, p. 48.

⁵⁵ *Id.*, p. 12.

⁵⁶ *Id.*, p. 19.

⁵⁷ *Id.*, p. 25.

⁵⁸ *Id.*, p. 38.

⁵⁹ *Id.*, p. 46.

⁶⁰ *Id.*, p. 48.

⁶¹ *Id.*, p. 49.

⁶² *Id.*, p. 55.

⁶³ *Id.*, pp. 69-70.

⁶⁴ *Id.*, p. 82.

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d) The GGP subject of this case passed through and was favorably endorsed by the PMRB;⁶⁵

e) There were conditions stated in the SSMP that if the permittee cannot comply, the permit will be cancelled and the permittee cannot conduct any activity;⁶⁶

f) During the site inspection, he saw no activity in the area and there was no mine waste and mine tailings;⁶⁷

g) His office did not receive any complaint about loss of life or property, loss of agricultural crops or marine life, or any complaint about pollution as a result of the alleged mining activity,⁶⁸ and

h) In his report, he required other reports that might prove violation of Republic Act (R.A.) No. 7942 or the Philippine Mining Act of 1995.⁶⁹


During his re-direct examination, Mr. Soriano clarified that:

a) He found out the supposed revocation of the SSMP on about the end of November or first week of December after he already prepared the report;⁷⁰ and

b) The area subject of SSMP is located in Brgy. Malimpuec but the area pinpointed to them as subject of the complaint is in Brgy. Sabangan. When they proceeded to Brgy. Malimpuec, he saw a processing plant for separating metallic mineral from sand being constructed.⁷¹

On re-cross examination, Mr. Soriano further stated that when they went to the site, he did not see any mining activity and he just concluded that there would be mining activity because an SSMP was obtained.⁷²

In response to clarificatory question from the Court, Mr. Soriano testified and re-affirmed that during their site visit he did not see any mining activity.⁷³


65 TSN dated 15 June 2017, pp. 82-83; TSN dated 30 August 2017, p. 12.

66 TSN dated 15 June 2017, p. 116.

67 TSN dated 30 August 2017, p. 15

68 *Id.*, p. 16.


69 *Id.*, p. 18.

70 *Id.*, p. 26.

71 *Id.*, pp. 27-28.

72 *Id.*, p. 32.

73 *Id.*, pp. 53-54.



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(2) Carolina C. Saunar

During her direct examination, Ms. Saunar stated that she is an employee of PCAB.⁷⁴ To abbreviate the proceedings, the parties entered into stipulations that: (a) the witness will testify that AMOVI and Xypher Builders are not included in the list of the registered contractors of PCAB; and (b) the witness issued certifications dated 28 February 2012 and 15 August 2016 to that effect.⁷⁵ With the above stipulations, the testimony of the said witness was dispensed with.⁷⁶

(3) Carlos A. Tayag

During his direct examination, Director Tayag attested that:

a) In 2011 and up to present, he is the Officer-In-Charge, Regional Director of MGB, Region 1;⁷⁷

b) Sometime in 2011, acting on the Letter-Complaint dated 19 September 2011, he ordered an investigation on the alleged mining activity in Brgy. Sabangan, Lingayen, Pangasinan;⁷⁸

c) Pursuant to his instruction, Legal Officer Noel Baga, Engineer III Ruben Soriano, and Senior Science Specialist Amelia Menzi submitted a Memorandum Report pertaining to the alleged illegal mining operations for gold and magnetite in foreshore areas in Brgy. Sabangan, Lingayen, Pangasinan;⁷⁹

d) After the investigation, the alleged mining activity stopped but was continued after the application of a new permit – an application for a GGP filed by the PHUDCO headed by accused Bigay and/or with Service Contract with Xypher Builders;⁸⁰ GGP is issued to any government entity or instrumentality for the purpose of extracting sand and gravel for government projects;⁸¹

e) He was a member of the PMRB that prepared the resolution and submitted the said application to accused Governor

⁷⁴ TSN dated 06 September 2017, p. 6.

⁷⁵ See Order dated 06 September 2017, *Rollo*, Vol. IV, p. 398-A.

⁷⁶ *Ibid.*

⁷⁷ TSN dated 20 September 2017, pp. 5 & 20.

⁷⁸ *Id.*, p. 21.

⁷⁹ *Id.*, p. 22.

⁸⁰ *Id.*, pp. 28-30

⁸¹ *Id.*, p. 31.

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Espino for his consideration.⁸² Later on, the GGP was issued to PHUDCO and Xypher Builders,⁸³

f) Upon subsequent site visits of their team, there was a continuation of activity because the previous operations of AMOVI as well as its equipment and processing plant were also used by Xypher Builders;⁸⁴

g) Accused Provincial Administrator Baraan wrote him a letter seeking advice as to who shall issue the MOEP regarding the export of magnetite sand being applied for by Xypher Builders.⁸⁵ He informed accused Baraan that it is the Governor who can issue the export permit since the latter was the one who issued the GGP;⁸⁶

h) As part of the attachments of request for advice, he came across the MOA to extract sand and gravel in the subject area executed by and between the Province of Pangasinan, through accused Espino, and Xypher Builders, through accused Bolayog, which was submitted to him;⁸⁷

i) He issued an Order confiscating in favor of the government the black sand or magnetite sand with estimated volume of 9,588 cubic meters extracted by Xypher Builders in Brgy. Sabangan, Lingayen.⁸⁸ Xypher Builders filed a Motion for Reconsideration, but he maintained his first order;⁸⁹

j) Accused Governor Espino issued the MOEP;⁹⁰ and

k) Xypher Builders is not a mining entity, and thus it is not a qualified person to conduct quarrying or extracting sand and gravel and then have it processed in the processing plant to separate other mineral that may be associated with the sand.⁹¹

Director Tayag identified the following documents:

a) Letter-Complaint dated 19 September 2011 (Exhibit "K");⁹²

⁸² *Id.*, pp. 30-33.

⁸³ *Id.*, p. 33.

⁸⁴ *Id.*, pp. 32-33

⁸⁵ *Id.*, p. 35.

⁸⁶ *Id.*, pp. 35-36.

⁸⁷ *Id.*, pp. 36-38.

⁸⁸ *Ibid.*

⁸⁹ *Id.*, p. 38.

⁹⁰ *Id.*, p. 41.

⁹¹ *Id.*, p. 44.

⁹² *Id.*, p. 21.

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- b) Investigation Report or Memorandum dated 18 October 2011 (Exhibits "P-1" to "P-14");⁹³
- c) Letter dated 24 October 2011 addressed to complainant Jaime P. Palisoc (Exhibit "P");⁹⁴
- d) Letter dated 24 October 2011 addressed to accused Espino (Exhibit "O");⁹⁵
- e) Letter dated 24 October 2011 addressed to accused C. Detera (Exhibit "R");⁹⁶
- f) Application for Exclusive Sand and Gravel Permit/Private Gratuitous Permit (Exhibit "C");⁹⁷
- g) Government Gratuitous Permit No. 02-2011 (Exhibit "D");⁹⁸
- h) Memorandum of Agreement between the Province of Pangasinan and Xypher Builders (Exhibit "B");⁹⁹
- i) Order resolving the Motion for Reconsideration filed by Xypher Builders (Exhibit "V");¹⁰⁰
- j) Mineral Ore Export Permit No. 003-2011 (Exhibit "G");¹⁰¹
- k) Letter dated 06 December 2011 addressed to accused Baraan (Exhibit "S");¹⁰² and
- l) Application for MOEP (Exhibit "E").¹⁰³

On cross examination, the following statements were elicited from Director Tayag:

a) Being the Regional Director of MGB, he is also the Chairman of PMRB.¹⁰⁴ In its Resolution No. 061, series of 2011, passed on 20 October 2011, PMRB endorsed the application for GGP of PHUDCO and its service contractor Xypher Builders, to the Office of the Governor because the latter is the one duly authorized to issue the same.¹⁰⁵ The PMRB was convinced that the application for GGP to develop the golf course is in order and there was no violation as regards the extraction;¹⁰⁶ and

b) He admitted having been interviewed by a TV network regarding the eco-tourism project in Pangasinan wherein he mentioned that the Governor wanted to construct golf course and if ever there was

⁹³ *Id.*, p. 23.

⁹⁴ *Id.*, p. 24.

⁹⁵ *Id.*, p. 26.

⁹⁶ *Id.*, p. 27.

⁹⁷ *Id.*, p. 31.

⁹⁸ *Id.*, p. 34.

⁹⁹ *Id.*, p. 37.

¹⁰⁰ *Id.*, p. 39.

¹⁰¹ *Id.*, p. 41.

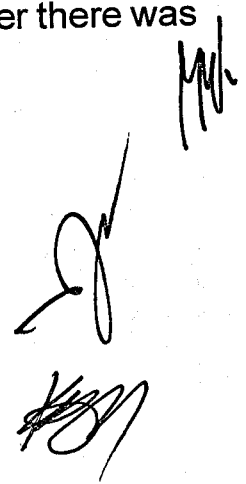
¹⁰² *Id.*, p. 42.

¹⁰³ *Id.*, p. 43.

¹⁰⁴ *Id.*, p. 47.

¹⁰⁵ *Id.*, pp. 49-50.

¹⁰⁶ *Id.*, p. 61.



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sand being removed, it was for the purpose of removing the sand that will not support turf grass or ornamental plants. He knew it that the sand that was going to be removed was in connection with that golf course project.¹⁰⁷

During his re-direct examination, Director Tayag clarified that:

a) He came to know that the activity being done in Sabangan is for a golf course project only after the investigation by his team;¹⁰⁸

b) The subject of the Application for MOEP was the magnetite sand or black sand that came from where they extracted the sand and gravel;¹⁰⁹

c) As to the separation of magnetic sand, no Mineral Processing Permit was obtained, which is different from the GGP;¹¹⁰ and

d) There was no black sand mining as they are only quarrying sand and gravel. The black sand has to be separated/removed in the processing plant and the ordinary sand be returned to the area mixed with other materials so that ornamental plants would survive.¹¹¹

On re-cross examination, Director Tayag further confirmed that:

a) There was no mining because the removal of the loose sand was incidental to the construction of a golf course. The process of treating the extracted loose sand was merely for the purpose of re-using the same for the purpose of supporting turf grass and other ornamental plants;¹¹² and

b) AMOVI did not apply for any MOEP.¹¹³

In response to clarificatory questions from the Court, Director Tayag stated that:

a) Mining is the extraction of minerals particularly metallic materials; Extraction means removing the soil and getting the minerals from the soil; Quarrying is more on quarrying materials such as gravel

¹⁰⁷ *Id.*, pp. 53-54.

¹⁰⁸ TSN dated 25 October 2017, pp. 32-33.

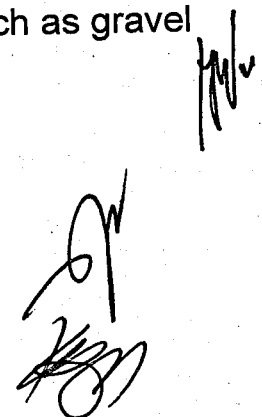
¹⁰⁹ *Id.*, pp. 38-40.

¹¹⁰ *Id.*, pp. 40-41.

¹¹¹ *Id.*, pp. 41-42.

¹¹² *Id.*, pp. 43-45.

¹¹³ *Id.*, p. 55.



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and sand; Separation or mineral processing is the process of separating of the magnetite sand from the sand and gravel;¹¹⁴

b) There was no black sand mining. With respect to AMOVI, there was no need for the Provincial Government to issue the SSMP as there was no small-scale mining;¹¹⁵ and

c) Even if the extraction of black or magnetite sand is incidental to building a golf course, a mineral processing permit from the MGB is still needed to be secured by the PHUDCO and/or Xypher Builders before processing it. No mineral processing permit was secured in this case.¹¹⁶

(4) Amalia Garacho Menzi

During her direct examination, Ms. Menzi attested that:

a) In 2011 and up to the present, she is a Senior Science Research Specialist at MGB, Region 1;¹¹⁷

b) One of her duties is to conduct investigation of mining complaints;¹¹⁸

c) In August 2011, she, together with Engr. Ruben Soriano and Mr. Noel Baga, all of MGB, and with different government officials from the LGU's EMB, conducted an investigation on the alleged illegal mining activity in Brgy. Sabangan, Lingayen, Pangasinan;¹¹⁹ and

d) As Geodetic Engineer, she was tasked to determine the location of the area subject of the complaint.¹²⁰ She found out that the area subject of the complaint, which is in Brgy. Sabangan, is 3-kilometer away from the area subject of the SSMP, which is in Brgy. Malimpuec.¹²¹

Ms. Menzi also identified the following documents:

- a) Small-Scale Mining Permit No. 011-2011 (Exhibit "A");¹²²
b) Topographic Map (Exhibit "P-6");¹²³ and

¹¹⁴ *Id.*, pp. 57-58.

¹¹⁵ *Id.*, pp. 58-60.

¹¹⁶ *Id.*, pp. 60-67.

¹¹⁷ TSN dated 29 November 2017, pp. 7 & 10.

¹¹⁸ *Id.*, p. 11.

¹¹⁹ *Id.*, pp. 12-13.

¹²⁰ *Id.*, p. 13.

¹²¹ *Id.*, p. 14.

¹²² *Id.*, p. 15.

¹²³ *Id.*, pp. 16-17.

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- c) Investigation Report or Memorandum dated 18 October 2011 (Exhibit "P-1" to "P-14").¹²⁴

On cross examination, Ms. Menzi testified that at the time of the field investigation, no actual extraction of sand was seen and their basis for saying that there was an activity there was only from what they were told by some barangay people who complained.¹²⁵

(5) *Edgardo L. Sison*

During his direct examination, Mr. Sison attested that since 2000 and up to present, he is the Municipal Licensing Officer of the Municipality of Lingayen.¹²⁶ In connection with this case, he issued the Certification dated 30 October 2017 certifying that no business permit was issued in favor of AMOVI in 2011.¹²⁷

(6) *Rolando N. Rea*

During his direct examination, Mr. Rea attested that:


a) Since 2003 up to present, he is a resident of Brgy. Sabangan, Lingayen, Pangasinan;¹²⁸

b) Sometime in 2011, the mining activities of AMOVI at the coastal area in Sabangan caught his attention. He saw the barb wire fence along the coastal area and a signboard indicating the name of AMOVI;¹²⁹

c) He was later on informed by Atty. Generosa Misleng of Tanggol Kalikasan that AMOVI has been replaced by XBI;¹³⁰ and

d) Thirteen (13) of them comprised of concerned citizens and barangay officials of Sabangan and Malimpuec filed a complaint with the Office of the Ombudsman.¹³¹

On cross examination, the following statements were elicited from Mr. Rea:


124 *Id.*, pp. 19-20.

125 *Id.*, pp. 21-22, 25-26.

126 TSN dated 17 January 2018, p. 14.

127 *Ibid.*

128 TSN dated 31 January 2018, pp. 10-11.

129 *Id.*, pp. 11-13.

130 *Id.*, p. 14.

131 *Id.*, p. 19.

